

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

GEOTAG INC., Plaintiff, v. FRONTIER COMMUNICATIONS CORPORATION, <i>et al.</i>, Defendant,	2:10-cv-00265
GEOTAG INC., Plaintiff, v. YELLOWPAGES.COM, LLC, <i>et al.</i>, Defendants,	2:10-cv-00272
GEOTAG INC., Plaintiff, v. GEORGIO ARMANI S.P.A.; <i>et al.</i>, Defendants,	2:10-cv-00569
GEOTAG INC., Plaintiff, v. AROMATIQUE, INC.; <i>et al.</i>, Defendants.	2:10-cv-00570

GEOTAG INC., Plaintiff, v. GUCCI AMERICA, INC.; et al., Defendants,	2:10-cv-00571
GEOTAG INC., Plaintiff, v. STARBUCKS CORP.; et al., Defendants.	2:10-cv-00572
GEOTAG INC., Plaintiff, v. RENT-A-CENTER, INC.; et al., Defendants.	2:10-cv-00573
GEOTAG INC., Plaintiff, v. THE WESTERN UNION COMPANY; et al., Defendants.	2:10-cv-00574

GEOTAG INC., Plaintiff. v. ROYAL PURPLE, INC.; <i>et al.</i>, Defendants.	2:10-cv-00575
GEOTAG, INC., Plaintiff, v. YAKIRA, L.L.C.; <i>et al.</i>, Defendants.	2:10-cv-00587
GEOTAG INC., Plaintiff, v. WHERE 2 GET IT, INC.; <i>et al.</i>, Defendants.	2:11-cv-00175
GEOTAG INC., Plaintiff, v. ZOOSK, INC. Defendant.	2:11-cv-00403

GEOTAG INC., Plaintiff, v. EYE CARE CENTERS OF AMERICA, INC. Defendant.	2:11-cv-00404
GEOTAG INC., Plaintiff, v. AMERCO, <i>et al.</i> Defendants.	2:11-cv-00421
GEOTAG INC., Plaintiff, v. 7-ELEVEN, INC., <i>et al.</i>, Defendants.	2:11-cv-00424
GEOTAG INC., Plaintiff, v. SUNBELT RENTALS, INC. Defendant.	2:11-cv-00425

GEOTAG INC., Plaintiff, v. CLASSIFIED VENTURES, LLC. Defendant.	2:11-cv-00426
GEOTAG INC., Plaintiff, v. CANON INC. and, CANON U.S.A., INC., Defendants,	2:12-cv-00043
GEOTAG INC., Plaintiff, v. AMERICAN APPAREL INC., Defendant,	2:12-cv-00436
GEOTAG INC., Plaintiff, v. ABERCROMBIE & FITCH CO., Defendant,	2:12-cv-00437

GEOTAG INC., Plaintiff, v. AMERICAN EAGLE OUTFITTERS INC., Defendant,	2:12-cv-00438
GEOTAG INC., Plaintiff, v. ANN INC., Defendant,	2:12-cv-00439
GEOTAG INC., Plaintiff, v. BURLEIGH POINT LTD., Defendant,	2:12-cv-00441
GEOTAG INC., Plaintiff, v. CATALOGUE VENTURES, INC., Defendant,	2:12-cv-00442

GEOTAG INC., Plaintiff, v. BURBERRY LIMITED, Defendant,	2:12-cv-00443
GEOTAG INC., Plaintiff, v. BURLINGTON FACTORY WAREHOUSE CORPORATION, Defendant,	2:12-cv-00444
GEOTAG INC., Plaintiff, v. CACHE INC., Defendant,	2:12-cv-00445
GEOTAG INC., Plaintiff, v. THE WILLIAM CARTER COMPANY, Defendant,	2:12-cv-00446

GEOTAG INC., Plaintiff, v. CHARMING SHOPPES INC., Defendant,	2:12-cv-00447
GEOTAG INC., Plaintiff, v. CHICO'S FAS INC., Defendant,	2:12-cv-00448
GEOTAG INC., Plaintiff, v. CITI TRENDS INC., Defendant,	2:12-cv-00449
GEOTAG INC., Plaintiff, v. CLAIRE'S BOUTIQUES, INC., Defendant,	2:12-cv-00450

GEOTAG INC., Plaintiff, v. COLDWATER CREEK INC., Defendant,	2:12-cv-00451
GEOTAG INC., Plaintiff, v. DAVID’S BRIDAL INC., Defendant,	2:12-cv-00452
GEOTAG INC., Plaintiff, v. DEB SHOPS INC., Defendant,	2:12-cv-00453
GEOTAG INC., Plaintiff, v. DELIAS INC., Defendant,	2:12-cv-00454

GEOTAG INC., Plaintiff, v. DESTINATION MATERNITY CORPORATION, Defendant,	2:12-cv-00455
GEOTAG INC., Plaintiff, v. DIESEL U.S.A. INC., Defendant,	2:12-cv-00456
GEOTAG INC., Plaintiff, v. DONNA KARAN INTERNATIONAL INC., Defendant,	2:12-cv-00457
GEOTAG INC., Plaintiff, v. LVMH MOET HENNESSY LOUIS VUITTON INC., Defendant,	2:12-cv-00458

GEOTAG INC., Plaintiff, v. DOTS, LLC, Defendant,	2:12-cv-00459
GEOTAG INC., Plaintiff, v. DRAPER'S & DAMON'S INC., Defendant,	2:12-cv-00460
GEOTAG INC., Plaintiff, v. EDDIE BAUER LLC, Defendant,	2:12-cv-00461
GEOTAG INC., Plaintiff, v. ESPRIT US RETAIL LIMITED, Defendant,	2:12-cv-00462

GEOTAG INC., Plaintiff, v. FACTORY CONNECTION LLC, Defendant,	2:12-cv-00463
GEOTAG INC., Plaintiff, v. THE FINISH LINE INC., Defendant,	2:12-cv-00464
GEOTAG INC., Plaintiff, v. FOREVER 21 RETAIL INC., Defendant,	2:12-cv-00465
GEOTAG INC., Plaintiff, v. FORMAL SPECIALISTS LTD., Defendant,	2:12-cv-00466

GEOTAG INC., Plaintiff, v. FREDERICK'S OF HOLLYWOOD STORES INC., Defendant,	2:12-cv-00467
GEOTAG INC., Plaintiff, v. GROUPE DYNAMITE, INC. D/B/A GARAGE, Defendant,	2:12-cv-00468
GEOTAG INC., Plaintiff, v. GUESS? RETAIL INC., Defendant,	2:12-cv-00469
GEOTAG INC., Plaintiff, v. H&M HENNES & MAURITZ LP, Defendant,	2:12-cv-00470

GEOTAG INC., Plaintiff, v. HANESBRANDS INC., Defendant,	2:12-cv-00471
GEOTAG INC., Plaintiff, v. HOT TOPIC INC., Defendant,	2:12-cv-00472
GEOTAG INC., Plaintiff, v. HUGO BOSS FASHION INC., Defendant,	2:12-cv-00473
GEOTAG INC., Plaintiff, v. J. CREW GROUP INC., Defendant,	2:12-cv-00474

GEOTAG INC., Plaintiff, v. JIMMY JAZZ INC., Defendant,	2:12-cv-00475
GEOTAG INC., Plaintiff, v. JOS. A. BANK CLOTHIERS INC., Defendant,	2:12-cv-00476
GEOTAG INC., Plaintiff, v. ALCO STORES INC. Defendant,	2:12-cv-00477
GEOTAG INC., Plaintiff, v. FRED'S INC., Defendant,	2:12-cv-00478

GEOTAG INC., Plaintiff, v. BAKERS FOOTWEAR GROUP, Defendant,	2:12-cv-00479
GEOTAG INC., Plaintiff, v. BROWN SHOE COMPANY INC., Defendant,	2:12-cv-00480
GEOTAG INC., Plaintiff, v. COLLECTIVE BRANDS INC., Defendant,	2:12-cv-00481
GEOTAG INC., Plaintiff, v. CROCS INC., Defendant,	2:12-cv-00482

GEOTAG INC., Plaintiff, v. DSW INC. D/B/A DSW SHOE INC., Defendant,	2:12-cv-00483
GEOTAG INC., Plaintiff, v. FLEET FEET INC., Defendant,	2:12-cv-00484
GEOTAG INC., Plaintiff, v. GENESCO INC., Defendant,	2:12-cv-00486
GEOTAG INC., Plaintiff, v. HEELY'S INC, Defendant,	2:12-cv-00487

GEOTAG INC., Plaintiff, v. JUSTIN BOOT COMPANY, Defendant,	2:12-cv-00488
GEOTAG INC., Plaintiff, v. AMERICAN GREETINGS CORPORATION, Defendant,	2:12-cv-00520
GEOTAG INC., Plaintiff, v. HALLMARK CARDS, INC., Defendant,	2:12-cv-00521
GEOTAG INC., Plaintiff, v. HICKORY FARMS INC., Defendant,	2:12-cv-00522

GEOTAG INC., Plaintiff, v. SPENCER GIFTS LLC, Defendant,	2:12-cv-00523
GEOTAG INC., Plaintiff, v. INTERNATIONAL COFFE & TEA, LLC, Defendant,	2:12-cv-00524
GEOTAG INC., Plaintiff, v. THINGS REMEMBERED, INC., Defendant,	2:12-cv-00525
GEOTAG INC., Plaintiff, v. THE YANKEE CANDLE COMPANY, Defendant,	2:12-cv-00526

GEOTAG INC., Plaintiff, v. BOSE CORPORATION, Defendant,	2:12-cv-00527
GEOTAG INC., Plaintiff, v. GUITAR CENTER INC., Defendant,	2:12-cv-00528
GEOTAG INC., Plaintiff, v. PROGRESSIVE CONCEPTS INC., Defendant,	2:12-cv-00529
GEOTAG INC., Plaintiff, v. 24 HOUR FITNESS WORLDWIDE INC., Defendant,	2:12-cv-00530

GEOTAG INC., Plaintiff, v. BALLY TOTAL FITNESS CORPORATION, Defendant,	2:12-cv-00531
GEOTAG INC., Plaintiff, v. BARE ESCENTUALS INC., Defendant,	2:12-cv-00532
GEOTAG INC., Plaintiff, v. BIOSCRIP INC., Defendant,	2:12-cv-00533
GEOTAG INC., Plaintiff, v. CRABTREE & EVELYN, Defendant,	2:12-cv-00534

GEOTAG INC., Plaintiff, v. CURVES INTERNATIONAL INC., Defendant,	2:12-cv-00535
GEOTAG INC., Plaintiff, v. GOLD'S GYM INTERNATIONAL INC., Defendant,	2:12-cv-00536
GEOTAG INC., Plaintiff, v. GREAT CLIPS INC., Defendant,	2:12-cv-00537
GEOTAG INC., Plaintiff, v. L.A. FITNESS INTERNATIONAL LLC, Defendant,	2:12-cv-00538

GEOTAG INC., Plaintiff, v. LIFE TIME FITNESS INC., Defendant,	2:12-cv-00539
GEOTAG INC., Plaintiff, v. M.A.C. COSMETICS INC., Defendant,	2:12-cv-00540
GEOTAG INC., Plaintiff, v. MERLE NORMAN COSMETICS, Defendant,	2:12-cv-00541
GEOTAG INC., Plaintiff, v. VITAMIN COTTAGE NATURAL FOOD MARKETS, INC., Defendant,	2:12-cv-00542

GEOTAG INC., Plaintiff, v. REGIS CORPORATION, Defendant,	2:12-cv-00543
GEOTAG INC., Plaintiff, v. SALLY BEAUTY SUPPLY LLC, Defendant,	2:12-cv-00544
GEOTAG INC., Plaintiff, v. SEPHORA USA INC., Defendant,	2:12-cv-00545
GEOTAG INC., Plaintiff, v. TONI&GUY USA, LLC, Defendant,	2:12-cv-00546

GEOTAG INC., Plaintiff, v. ULTA SALON, COSMETICS & FRAGRANCE INC., Defendant,	2:12-cv-00547
GEOTAG INC., Plaintiff, v. VITAMIN SHOPPE INDUSTRIES, INC., Defendant,	2:12-cv-00548
GEOTAG INC., Plaintiff, v. EYEMART EXPRESS, LTD., Defendant,	2:12-cv-00549
GEOTAG INC., Plaintiff, v. LUXOTTICA RETAIL MORTH AMERICA INC., Defendant,	2:12-cv-00550

GEOTAG INC., Plaintiff, v. NATIONAL VISION INC., Defendant,	2:12-cv-00551
GEOTAG INC., Plaintiff, v. U.S. VISION INC., Defendant,	2:12-cv-00552
GEOTAG INC., Plaintiff, v. WILD BIRDS UNLIMITED INC., Defendant,	2:12-cv-00553
GEOTAG INC., Plaintiff, v. JOS. A. BANK CLOTHIERS INC., Defendant,	2:12-cv-00554

GEOTAG INC., Plaintiff, v. BUTH-NA-BODHAIGE INC., Defendant,	2:12-cv-00555
GEOTAG INC., Plaintiff, v. PSP GROUP, LLC, Defendant,	2:12-cv-00556
GEOTAG INC., Plaintiff, v. RITZ INTERACTIVE LLC, Defendant,	2:12-cv-00557
WHERE 2 GET IT, INC.; <i>et al.</i>, Plaintiff, v. GEOTAG INC., Defendant.	2:12-cv-00149

**PLAINTIFF GEOTAG INC.'S MOTION FOR ENTRY
OF AN AMENDED PROTECTIVE ORDER**

Pursuant to the Court's April 12 Order, GeoTag Inc. ("GeoTag") respectfully requests that the Court enter GeoTag's attached proposed Amended Protective Order (Exh. A). GeoTag and the Defendants diligently attempted to negotiate an agreed Amended Protective Order and despite the good faith attempt, there are six issues on which the parties were unable to agree:

- whether the source code must be made available for review in the Dallas, Texas metropolitan area or the Eastern District of Texas (§5(a));
- whether cell phones and a notetaking computer can be brought into the Source Code reviewing room so long as there is compliance with all other limitations for reviewing source code (§5(a)(2));
- whether Source Code must be produced in "compilable form" to allow the reviewer to analyze how the Source Code executes and operates (§5(a)(c));
- the tools that the Producing Party must make available for review and analysis on the "standalone" computer with the Source Code (§5(f));
- whether the Producing Party has the burden for justifying rejecting a good faith request for additional printed pages of source code in excess of the agreed page limits (§5(g)); and
- whether the prosecution bar should apply to defendants as well as the plaintiff's attorneys (§7).

These issues will be addressed briefly below.

A. Section 5(a) Location for Source Code

The parties agree that Source Code may be (a) produced directly to a Receiving Party, (b) made available at a secure facility in the Dallas, Texas metropolitan area, or (c) made available at a location mutually agreed upon by the Receiving and Producing Parties. GeoTag believes that a fourth option would be to allow the Producing Party to make the Source Code available for inspection at the Producing Party's counsel located in the Dallas, Texas metropolitan area or in the Eastern District of Texas (collectively "Texas location"). This geographic limitation places very little burden on the parties because once the Source Code is loaded onto a "standalone computer," as the parties have agreed, the "standalone computer" could be as easily shipped to a Texas location, such as defendants' counsel, as it would be to ship it to a secure facility in Dallas or anywhere else in the country. The defendants' agreement to a similar but narrower geographic limitation (limited to the Dallas metropolitan area) with respect to producing the Source Code at a secure location demonstrates that they recognize that there is little to no burden to such a geographic limitation. Furthermore, producing Source Code in a limited geographic area will make it more efficient to travel to and review the code as well as make it available for trial

Defendants want to be able to make the Source Code available for inspection at the Producing Party's counsel anywhere in the country or anywhere "as permitted under the Federal Rules of Civil Procedure," which is unnecessarily inefficient. Defendants' proposal will require a significant amount of wasted time and money traveling around the country to review individual Source Code, when the Source Code could just as easily be provided in a Texas location. Furthermore, the extensive travel substantially reduces the amount of time available to review the code in view of the current case schedule. Therefore, GeoTag respectfully requests that the

Protective Order state that production to counsel of the Producing Party be limited to the “office of counsel for the Producing Party in the Dallas, Texas metropolitan area or in the Eastern District of Texas” and exclude the option to produce “as permitted under the Federal Rules of Civil Procedure.”

B. Section 5(a)(2): Cell Phone and Notetaking Computer in the Source Code Reviewing Room

GeoTag contends that the Receiving Party should be allowed to bring a cell phone and notetaking computer into the source code reviewing room, so long as the Receiving Party does not use Internet access and only use voice capabilities on the phone. Use of the voice capabilities of a cell phone and a notetaking computer (without Internet access) will allow for a more efficient review of the Source Code than isolating the reviewer and requiring handwritten notes. Any concern defendants have regarding the use of a cell phone or a notetaking computer in the Source Code review room are unwarranted in view of the significant protections provided by the Protective Order. For example, the agreed portion of the Protective Order requires advance notice of anyone reviewing the code, an opportunity to object to any expert or consultant who will review the code, limits what notes can be taken and how much code can be copied, and requires signing an agreement to be bound by the terms of the Protective Order. Therefore, any further restrictions on how the code is reviewed are unnecessary.

C. Section 5(c): Making Source Code Available “In A Compilable Form”

GeoTag contends that Source Code should be made available “in a compilable form, to the extent it exists in that format and can be produced or made available in that format without undue burden.” A “compilable form” is necessary to be able to execute the code to see how it operates when it executes. Defendants want to limit production of Source Code to solely

electronic native format so that it can only be reviewed and not executed. Defendants contended that producing in “compilable form” may not be possible because it is in the possession of a third party, however, that concern should be alleviated because the Order would only require production if it is not an “undue burden.” Defendants also content that producing in “compilable form” is impractical because certain executable code requires access to the Internet (*e.g.*, Google and Mapquest). However, this argument fails because GeoTag would still be able to see how the code operates and executes from the “compilable form” without the Internet access.

D. Section 5(f): Making Source Code Available With Tools To Analyze The Source Code

To the extent that the Source Code is not produced to a Receiving Party, GeoTag believes that the Producing Party shall install tools on the “standalone computer” sufficient to “analyze” the code, including providing specific tools, “Visual Studio” and “Understand tools.” These tools allow the reviewing party to analyze how the code executes and operates. Defendants seek to significantly restrict review of the code to only “viewing and searching.” Such a limitation unnecessarily restricts the Receiving Party’s ability to perform a thorough infringement analysis on the Source Code.

E. Section 5(g): The Burden for Denying The Production of Additional Source Code Beyond The Agreed Limits Should Remain On The Producing Party

GeoTag contends that so long as the Receiving Party has a good faith reason for requesting more than the limit of a block of 35 pages of source code, or more than 500 pages total, that the Producing Party shall have the burden of demonstrating why it should not comply with the request. Defendants, however, want the burden on the Receiving Party to demonstrate good cause for requesting the additional pages. As with the remainder of the Protective Order that places the burden on the party seeking to limit the disclosure of information, the Producing

Party should likewise maintain the burden of demonstrating why it should not comply with the request for additional pages of Source Code.

F. Section 7: Patent Prosecution Bar

GeoTag contends that the patent prosecution bar should apply equally to the defendants as to the plaintiff. If plaintiffs who review defendants' Highly Sensitive Material of the defendants are subject to the prosecution bar, then defendants who review plaintiff's Highly Sensitive Material should likewise be subject to the prosecution bar. For example, GeoTag currently has a product, ZLand.com which includes proprietary code that is relevant to the patent-in-suit. Like Defendants' concerns about its Highly Sensitive Material, GeoTag has the same concerns about its proprietary product and source code. In addition, the prosecution bar should not include reexaminations, which could not broaden the scope of the issued patent.

Dated: September 27, 2012

Respectfully submitted,

/s/ David R. Bennett

By: David R. Bennett
Direction IP Law
P.O. Box 14184
Chicago, IL 60614-0184
Telephone: (312) 291-1667
e-mail: dbennett@directionip.com

Daniel Mount
Kevin Pasquinelli
Mount Spelman & Fingerman, PC
333 West San Carlos Street
Riverpark Tower, Suite 1650
San Jose, CA 95110
Telephone: (408) 279-7000
e-mail: dan@mount.com
kpasquinelli@mount.com

Andrew Spangler

Texas State Bar No. 24041960
Spangler & Fussell, PC
208 N. Green Street
Suite 300
Longview, TX 75601
Telephone: (903) 753-9300
e-mail: spangler@sfipfirm.com

Hao Ni
Texas State Bar No. 24047205
Stevenson Moore
Texas State Bar No. 24076573
Ni Law Firm, PLLC
8140 Walnut Hill Lane
Suite 310
Dallas, Texas 75231
Telephone: (972) 331-4602
Facsimile: (972) 314-0900
e-mail: hni@nilawfirm.com
smoore@nilawfirm.com

**ATTORNEYS FOR PLAINTIFF
GEOTAG INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on September 27, 2012, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/David R. Bennett

David R. Bennett

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel has complied with the meet and confer requirement of Local Rule CV-7(h). The Parties conferred by telephone and web conference on September 27, 2012 in good faith in an attempt to reach an agreement regarding the terms of the proposed Protective Order. The Parties were unable to reach an agreement on all provisions. Discussions have conclusively ended in an impasse, leaving an open issue for the Court to resolve.

/s/David R. Bennett

David R. Bennett